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August 30, 2007

VIA E-FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

RE: Northwestern Pacific Railroad Company – Change in Operators Exemption – North Coast Railroad Authority, Sonoma-Marín Area Rail Transit District and Northwestern Pacific Railway Co., LLC, Finance Docket No. 35073

Dear Secretary Williams:

By letter dated August 28, 2007, Baywood Properties, Inc. (“Baywood”) has responded to Northwestern Pacific Railroad Company’s (“NWPCO”) change of operator notice of exemption (“notice”) filed under the above-referenced docket on August 9, 2007. Baywood most notably does not object to NWPCO’s notice, does not request a delay of the effective date of the notice, and does not accuse the parties to the transaction encompassed by NWPCO’s notice of improperly invoking the class exemption. Rather, Baywood asks the Board to take the highly unusual step of conditioning its “approval” of the notice by requiring NWPCO and/or North Coast Railroad Authority (“NCRA”) to negotiate rental terms for NWPCO’s use of about 1000 feet of rail line which Baywood claims to own pursuant to a 1989 real estate transaction. As set forth below, Baywood offers no valid basis for the Board to so condition NWPCO’s use of the class exemption process here, and there is no reason whatsoever for the Board to delay the proceeding or prevent the consummation of the proposed transaction as scheduled (and as provided under the Board’s regulations) on September 8, 2006.

As noted, Baywood claims ownership of real estate and personal property (a 1000-foot segment of rail line) for which Baywood insists it would be entitled to rent from NWPCO and/or NCRA. Baywood’s claim – which NWPCO disputes¹ – is inherently a matter of property law and contract, and thus should be addressed by the appropriate state court, not the Board. See,

¹ NCRA has advised NWPCO that it also considers Baywood’s claim to be meritless. Neither NCRA nor NWPCO is willing to negotiate or arbitrate with Baywood concerning any sort of rental arrangement.

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The Honorable Vernon A. Williams
August 30, 2007
Page 2 of 2

e.g., General Railway Corporation, d/b/a Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – In Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867 (STB served June 15, 2007) slip op. at 4 (dispute involving ownership of a rail line involves state contract and property law issues; the Board is not the proper forum to resolve such disputes); Ohio Valley Railroad Company – Petition to Restore Switch Connection and Other Relief, STB Finance Docket No. 34608 (STB served Feb. 23, 2005) slip op. at 6 (The board defers to the courts on contractual matters). In fact, Baywood’s request to have the Board “condition” its acceptance of NWPCO’s notice is an opportunistic attempt by Baywood to bypass the appropriate legal processes under state law by which Baywood should seek both to establish or clarify its disputed legal rights to the property in question, and, if successfully so established, to enforce those rights.

Baywood’s claim to a 1000-foot stretch of rail line over which NWPCO would operate is, in any event, dubious at best.² While alleging ownership of main line trackage, Baywood nevertheless maintains that it is not, and does not intend to become, a railroad subject to the Board’s jurisdiction. Baywood did not seek a license from the Interstate Commerce Commission (“ICC”), the Board’s predecessor, to acquire the disputed 1000-foot stretch of main line trackage in 1989, and NWPCO’s research indicates that Baywood has never before participated in proceedings before the ICC or the Board, despite the fact that the lines over which NWPCO will operate have been the subject of many other proceedings in the past. (Baywood fails to explain why it did not participate in these earlier proceedings.) Thus, even if Baywood were able to establish a right to own the 1000-foot stretch of rail line, it could not validly exercise such a right without an appropriate Board license under 49 U.S.C. 10901.

For the reasons set forth above, the Board should deny Baywood’s unusual request in this proceeding, and the Board should not impose any conditions upon its acceptance of NWPCO’s change of operator notice of exemption. Finally, NWPCO’s exemption should be permitted to take effect as scheduled on September 8, 2007.

Respectfully submitted,



Robert A. Wimbish
Attorney for Northwestern Pacific
Railroad Company

Cc: All parties of record

² It is unclear why Northwestern Pacific Railroad Company (“Northwestern Pacific” – a defunct corporate affiliate of Southern Pacific Transportation Company and not the NWPCO which has filed the notice presently before the Board) would have agreed in 1989 to sell 1000 feet of main line bisecting a route over which Northwestern Pacific would – and did – continue to operate. The alleged Northwestern Pacific-Baywood rail line transfer is all the more suspect in the absence of an agreement permitting Northwestern Pacific to retain operating rights to traverse this intervening segment of main line trackage following the purported conveyance.